

Before the  
Federal Communications Commission  
Washington, D.C. 20554

MM Docket No. 92-73

In the Matter of

Amendment of Section 73.202(b). RM-7954  
Table of Allotments,  
FM Broadcast Stations.  
(Warrenton, Georgia)

**NOTICE OF PROPOSED RULE MAKING**

Adopted: March 30, 1992; Released: April 13, 1992

Comment Date: June 4, 1992  
Reply Comment Date: June 19, 1992

By the Acting Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed on behalf of William P. Eaton ("petitioner"), requesting the allotment of Channel 232A to Warrenton, Georgia, as that community's second local FM transmission service. Petitioner states that it will apply for the channel if allotted.<sup>1</sup>

2. We believe the public interest would be served by the allotment of a second FM transmission service to Warrenton, Georgia. However, a Commission engineering analysis indicates that the allotment of Channel 232A to Warrenton would be short spaced to Channel 232A at Gibson, Georgia, as allotted in *Memorandum Opinion and Order* (MM Docket No. 89-404) 7 FCC Rcd \_\_\_\_\_ (adopted March 30, 1992). Further analysis indicates that Channel 254A is available for allotment at Warrenton, in lieu of Channel 232A. Channel 254A can be allotted to Warrenton in compliance with the Commission's minimum distance separation requirements with a site restriction of 10.2 kilometers (6.3 miles) northeast.<sup>2</sup>

3. The Commission believes it would be in the public interest to seek comments on the proposal to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to the following community:

	Channel No.	
City	Present	Proposed
Warrenton, Georgia	226C3	226C3, 254A

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may submit comments on or before June 4, 1992, and reply comments on or before June 19, 1992, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows:

John E. Fiorini, III  
Mark Van Bergh  
Gardner, Carton & Douglas  
1001 Pennsylvania Avenue, N.W.  
Suite 750  
Washington, DC 20004  
(Attorneys for petitioner)

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

7. For further information concerning this proceeding, contact Elizabeth Beaty, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

<sup>1</sup> Petitioner's request was originally returned by letter as short spaced to a counterproposal in MM Docket No. 89-404. See Letter to John E. Fiorini, III (counsel to William P. Eaton), from Karl A. Kensinger, Chief, Allocations Branch, dated February 7, 1990. Petitioner filed a petition for reconsideration of the action requesting reinstatement of its petition. The availabil-

ity of an alternate channel for Warrenton obviates the necessity to resolve the reconsideration on its merits. We will dismiss petitioner's petition for reconsideration as moot at the termination of this proceeding.

<sup>2</sup> The coordinates for Channel 254A at Warrenton are North Latitude 33-28-33 and West Longitude 82-35-24.

## FEDERAL COMMUNICATIONS COMMISSION

Michael C. Ruger  
Acting Chief, Allocations Branch  
Policy and Rules Division  
Mass Media Bureau

## APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is

directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.